IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4945 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BIPINCHANDRA CHIMANLAL SONI

Versus

COMPETENT AUTHORITY & ADMINISTRATION MUMBAI UNIT

Appearance:

1. Special Civil Application No. 4945 of 2000

MR RS SANJANWALA for Petitioner No. 1

MS MANISHA LAVKUMAR for Respondent No. 1

MR A D OZA, GOVERNMENT PLEADER for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 02/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India

challenging impugned Notice dated 17/12/1992, issued by respondent no.1 herein, in exercise of powers u/s.6 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (for short, "the said Act").

2. It was alleged against the petitioner that the petitioner was an associate of one Jayantilal Maneklal Soni who had acquired certain properties illegally. It was also alleged that Jayantilal Maneklal Soni was detained under the COFEPOSA and since the petitioner was an associate of the said detenu, he was required to be dealt with under the said Act. Therefore, Notice u/s.6(1) of the said Act was issued to the petitioner.

3. The petitioner has challenged the said Notice on various counts. It has been contended by the petitioner that in the past an order was issued for detaining Jayantilal Maneklal Soni, but, it was subsequently revoked u/s.11 of the said Act. That a fresh order was thereafter issued and the said fresh order could not have been issued. That, therefore, the order of detention of Jayantilal Maneklal Soni is illegal. That when the order of detention of Jayantilal Maneklal Soni is illegal, there could not be any action against the present petitioner u/s.6 of the said Act. Therefore, the petitioner has challenged the said Notice issued u/s.6 of the said Act.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Mr.Manish Kazi learned advocate has appeared on behalf of the respondent no.1. Mr.A D Oza, learned GP has appeared on behalf of respondent no.2. I have heard the learned advocates for the parties and have perused the papers.

5. It has been mainly contended here that the impugned Notice has been issued on the basis of a detention order passed against one Jayantilal Maneklal Soni in exercise of the powers under the COFEPOSA. It is not much in dispute that a detention order was passed against Jayantilal Maneklal Soni under the COFEPOSA and that he was detained by order dated 18/12/82. However, the said order was revoked u/s.11 of the said Act and thereafter, a fresh order was passed for the detention of the said detenu. The said fresh order was again made limited to the period stated in the subsequent order.

6. Considering the above facts, it is clear that the facts of the present case are on par with the facts in S.C.A.No.373/1999 which has been decided today i.e.

02/04/04.

7. On comparing the two matters, it is clear that the detention order against Jayantilal Maneklal Soni is the subject matter in dispute in both the matters. While deciding the above mentioned Special Civil Application, this Court has held that the order of detention passed subsequently as a second order of detention against Jayantilal Maneklal Soni is illegal.

8. The said two orders of detention of Jayantilal Maneklal Soni are again the subject matter of dispute in the present petition. Therefore, in the present petition also, it is required to be observed that in view of the reasonings and findings recorded in S.C.A.No.373/1999 which has been decided today, the second detention order against detenu, Jayantilal Maneklal Soni, is required to be treated to be illegal for the purpose of this petition also. In the present petition also, the Notice u/s.6(1) of the said Act has been based on the detention order issued against said detenu Jayantilal Maneklal Soni. Even on this point, the facts of the present petition are on par with the facts in the aforesaid Special Civil Application which has been decided today. The reasonings given in the aforesaid Special Civil Application will apply to the facts of the case on hand also.

9. On hearing, it is found that in the earlier petition this Court has observed that the nexus between the petitioner in the said petition and detenu Jayantilal Maneklal Soni was not prima facie established on record. In the present case also, we find that there was no material before the first respondent in order to come to a tentative decision that there was a nexus between the present petitioner and Jayantilal Maneklal Soni. In absence of no such nexus, Notice u/s.6(1) could not have been issued by the first respondent to the present petitioner on the strength of the detention order passed against detenu J.M.Soni. Moreover, when the said order was first quashed and then a fresh order was passed and when the second order was found to be illegal, there is no reason for upholding the Notice.

10. Therefore, for the reasons stated in S.C.A.No.373/1999 which has been decided today i.e. on 02/04/04, this petition is allowed.

(i) The Notice issued by respondent no.1 herein u/s.6 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 dated 17/12/1992 placed at Annexure 'A'

is hereby quashed and set aside.

(ii) The order of detention passed against Jayantilal Maneklal Soni issued by respondent no.1, which is the basis for issuing the impugned Notice, is also ordered to be quashed and set aside.

Rule is made absolute accordingly with no orders as to costs. Direct service permitted.

(D. P. Buch, J.)

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